evidence of substantial governmental interests and that they were not tailored with sufficient precision to satisfy First Amendment standards.[24] The Court of Appeals made it clear, however, that must-carry regulations are not inherently unconstitutional.[25]

The Court of Appeals in Quincy and Century assumed, without firmly deciding, that the correct standard of judicial review in assessing the constitutionality of must-carry provisions is the standard set forth in the Supreme Court's well known decision in United States v. O'Brien,[26] the standard applicable to content-neutral regulations that have only an "incidental" impact on speech.[27] While the Court of Appeals did not firmly settle the matter, it was surely correct in its judgment that the content-neutral

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24/ Quincy Cable TV, Inc. v. FCC, 768 F.2d 1434 (D.C. Cir. 1985), cert. denied, 476 U.S. 1169 (1986); Century Communications Corp. v. FCC, 835 F.2d 292 (D.C. Cir. 1987), clarified, 837 F.2d 517 (D.C. Cir.), cert. denied, 486 U.S. 1032 (1988).

25/ In its Century opinion, the court explained: "We do not suggest that must-carry rules are per se unconstitutional, and we certainly do not mean to intimate that the FCC may not regulate the cable industry so as to advance substantial governmental interests." Century, 835 F.2d at 304.

26/ 391 U.S. 367 (1968), reh'g denied, 393 U.S. 900 (1968).

27/ In Century, the Court of Appeals stated that it need not solve the "vexing question" of whether the O'Brien standard is the appropriate standard of review, because the regulations at issue before it would fail under even the reduced level of judicial scrutiny contemplated by O'Brien. See 835 F.2d at 298.

must-carry provisions at issue in Quincy and Century should be judged under the O'Brien test.[28] That matter may be settled once and for all in the context of the pending court challenges to the must-carry provision in section 4 of the 1992 Cable Act.[29] This time, however, the court should

The must-carry rules are designed to further the national policy favoring broadcast localism:[30]

> [L]ocal news [and] information . . . programming is the linchpin of localism. It is the 'public interest' commitment."[31]

The must-carry requirements of the Act are supported by substantial evidence generated by the Committee on Commerce, Science and Transportation documenting the palpable harm to our system of local television broadcasting caused by the refusal of cable operators to carry local television signals and the repositioning by cable operators of local broadcast channels.[32]

The rules are also narrowly tailored. The must-carry provisions of the new Act contain several well-crafted provisions that limit any potential infringement on the First Amendment rights of cable operators. Specifically, the legislation ties carriage requirements to the channel capacity of affected cable systems and allows cable operators discretion to choose among local broadcast stations in satisfying their must-carry obligations. These

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30/ See Cable System Broadcast Signal Carriage Report, Staff Report by the Policy and Rules Division of the Mass Media Bureau, Sept. 1, 1988.

31/ House Comm. on Energy and Commerce, Cable Television Consumer Protection and Competition Act of 1992, H.R. Rep. No. 628, 102d Cong., 2d Sess. 56 (1992) (quoting Remarks of Alfred C. Sikes, Chairman, FCC, before the International Radio and Television Society, Sept. 19, 1991, at 6).

32/ See Cable System Broadcast Signal Carriage Report, Staff Report by Policy and Rules Division of the Mass Media Bureau, Sept. 1, 1988.

limitations effectively eliminate the only plausible threat to the First Amendment rights of cable operators, by insuring that in those relatively rare instances in which cable channel capacity is genuinely scarce, the must-carry obligations of the cable operator are significantly relaxed.[33/] Under these precisely tailored and content-neutral must-carry provisions, the threat to cable operators is fanciful. By calibrating carriage requirements to a cable system's channel capacity, and by giving cable operators the right to pick and choose among competing local broadcasters whenever "demand" exceeds the "supply" imposed by the statute, the Act simply eliminates any meaningful First Amendment "pinch" to cable operators.

Moreover, the Commission's conclusion that home shopping format broadcasters are eligible, like all other broadcasters, for mandatory cable carriage will not disturb the delicate balance achieved by section 4 of the Act and, indeed, will further the goal of promoting broadcast localism. Home shopping detractors have focused exclusively

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33/ With respect to commercial stations, cable systems with more than 12 activated channels would be required to carry qualified local broadcast signals on one-third of their channels. 106 Stat. at 1471. For the relatively small number of cable systems with 12 or fewer activated channels, the cable operators would be required to carry at least three local commercial television station signals. Id. When there are more local broadcast stations vying for must-carry status than the particular cable operator is required to carry under this tiered system, the cable operator has the discretion to choose which local broadcast stations to carry. Id.

on the commercial aspect of the home shopping format, ignoring the significant local programming offered by home shopping stations, such as the SKC Stations.[34/] A review of the programming records of the SKC Stations establishes that SKC (like HSN before it) has dedicated itself to providing programming specifically designed to respond to significant issues of concern to local communities, including minorities and children.[35/] Indeed, the evidence in the SKC Station Attachments establishes that the SKC Stations consistently

week to the presentation of non-entertainment programming, a substantial portion of which is locally produced -- exceeding the former programming performance guidelines promulgated by the Commission regarding local, informational, and non-entertainment programming.

In addition, a conclusion by the Commission that home shopping format stations are eligible for carriage will not impose any additional burdens on cable operators. SKC is not asking for special treatment or for a preferred status that would adversely impact carriage by cable operators of nonbroadcast services. SKC merely seeks to be included on an equal basis in the pool of broadcast stations that are eligible for must-carry status. Including the SKC Stations in that pool would thus not have any additional impact on a cable system's ability to carry nonbroadcast services.

C. The Creation of a Special Public Interest Standard Applicable Only to Home Shopping Format Stations Would Inject an Element of Content-Based Discrimination Into the Otherwise Content-Neutral Must-Carry Scheme.

While inclusion of home shopping format stations in the pool of broadcasters eligible for mandatory cable carriage will not jeopardize the must-carry rules, exclusion of home shopping format stations, based on section 4(g)'s requirement that the Commission determine whether home shopping format stations are operating in the public interest, convenience and necessity -- based exclusively on the context of their entertainment programming -- could

raise a serious constitutional threat to the entire must-carry scheme. To avoid that threat, the Commission should judge the SKC Stations using the same public interest standard against which all other broadcasters are judged. Based on that standard, the only conclusion the Commission can reach under section 4(g) given the record evidence is that the SKC Stations are operating in the public interest, convenience and necessity and are therefore subject to mandatory carriage requirements.

1. The record establishes that the SKC Stations are operating in the public interest, convenience and necessity as that standard traditionally has been applied.

As the SKC Comments establish, the SKC Stations are operating in the public interest, convenience and necessity under conventional Commission guidelines. Historically, the focus of the Commission in the public interest inquiry has been on a station's programming service to its community.[37/] The SKC Stations' records of ascertainment and programming demonstrate their commitments to broadcasting significant programming responsive to issues of concern to their respective communities of license. Because the nature and extent of SKC's efforts to satisfy its public interest

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37/ See, e.g., Commission en banc Programming Inquiry, 44 F.C.C. 2303, 2316 (1960) ("[T]he principal ingredient of the licensee's obligation to operate his station in the public interest is the diligent, positive, and continuing effort by the licensee to discover and fulfill the tastes, needs, and desires of his community or service area, for broadcast service.").

obligations is set out fully in the SKC Comments, only a brief summary follows:

Ascertainment. The SKC Stations have adopted a number of procedures designed to identify issues of importance to their local communities. For example, each station maintains on-going contacts with community leaders from a broad spectrum of local organizations and interests, representing all nineteen of the Commission's former community leader categories, including members of minority and women's groups.[38/]

Non-entertainment programming. Although the Commission no longer prescribes quantitative guidelines for nonentertainment programming, SKC (like HSN before it) has nevertheless required its stations to comply in all respects with the Commission's former guidelines. In fact, the SKC Stations not only meet but exceed those guidelines, airing 7.6 percent local programming, 7.6 percent news/public affairs programming, and 10.2 percent non-entertainment programming overall each week. These figures exceed not only the Commission's former guidelines but also the comparable performance of similarly situated stations in virtually every category. Thus, the SKC Stations' non-entertainment programming exceeds that of stations that in Congress's judgment automatically qualify for must carry.[39/]

38/ See SKC Comments, at 22-23.

39/ See id. at 23-25.

Locally produced public interest programming. The SKC Stations' principal public affairs program is "In Your Interest" ("IYI"), a four and one-half minute locally produced program that is aired each hour, every day, seven days a week (except when other non-entertainment programming is in progress). In 1992, each SKC Station aired on average nearly 40 different locally-produced IYI segments per month. In addition, most SKC Stations also carry a one-half hour locally-produced IYI program each Sunday morning.

The IYI format includes interviews with experts and community leaders, discussions, demonstrations and man-on-the-street interviews designed to elicit actual local opinion, depending on the approach optimally suited to the particular issue. Segments have addressed an almost unlimited variety of national and local issues from AIDS to gang violence. Guests have included experts in such diverse fields as medicine, agriculture, environment, education and sports. In 1990 alone, over 100 local governmental officials appeared on the program.

Other locally produced non-entertainment programming aired by the SKC Stations includes a variety of religious, ethnic and public affairs programming and children's educational programming.[40/]

Other public interest programming. In addition to the locally produced nonentertainment programming offered by the

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40/ See id. at 28-32.

SKC Stations, individual stations broadcast a variety of other public affairs, news and educational programming, including coverage of such breaking news events as the recent World Trade Center bombing and the Persian Gulf War. The SKC Stations also run a large volume of public service announcements on behalf of a wide variety of local community and national organizations.[41/]

The SKC Comments demonstrate that SKC is doing exactly what Congress envisioned when it enacted the Communications Act in 1934 to establish a nationwide system of privately owned over-the-air broadcasting stations based on the concept of local licensing and local service. By centering their programming on IYI, the SKC Stations have returned television to its roots in the local community, providing a programming service that actively seeks out local problems and concerns and addresses them on a local basis by involving community leaders, informed experts and average citizens. In both quantitative and qualitative respects, the SKC Stations equal or exceed the public interest programming of similarly situated UHF broadcasters, yet of all over-the-air broadcasters, Congress has singled out home shopping format stations alone to submit to this extraordinary proceeding -- based purely on the content of their entertainment programming. On this record, the only conclusion the Commission can reach under its well-

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41/ See id. at 32.

established public interest standard is that the SKC Stations are operating in the public interest, convenience and necessity.

2. A determination by the Commission that the SKC Stations are not operating in the public interest for purposes of must-carry status would violate the Constitution.

In the face of the SKC Stations' impressive record of programming in the public interest, any conclusion by the Commission that the SKC Stations are nevertheless ineligible for cable carriage would constitute an unconstitutional distinction in the application of the Commission's well-established public interest test based exclusively on the

a. Regulations that discriminate on the basis of content are presumptively invalid.

No matter how it is dressed up for public view, the underlying rationale behind section 4(g) is that the programming of SKC is unworthy of protection because of its content. Regulations that discriminate based on content are presumptively unconstitutional.[43/]

43/ The First Amendment tradition contains at its core the elemental proposition that an intent to stifle speech because of disagreement with it or disdain for it simply cannot be reconciled with the Constitution. See, e.g., R.A.V. v. City of St. Paul, 112 S. Ct. 2538, 2548 (1992) ("The point of the First Amendment is that majority preferences must be expressed in some fashion other than silencing speech on the basis of its content."); Texas v. Johnson, 491 U.S. 397, 414 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply

It is well established that regulations that discriminate based on content must be "finely tailored to serve substantial state interests, and the justifications offered for any distinctions . . . drawn[] must be carefully scrutinized."[44/] The only interest articulated by the Act and this Notice to be served by subsection (g) is to ensure that home shopping format broadcasters are operating in the public interest. But this goal is adequately served by determining through the ordinary license renewal process whether home shopping format stations are operating in the public interest. There is no defensible governmental

In addition, discriminating against home shopping format stations by subjecting them to this novel proceeding cannot be defended as narrowly tailored to serve the articulated governmental interest, since the class of broadcasters subjected to this proceeding was selected entirely without regard to either (1) the public interest component of the programming of home shopping format stations or (2) the interest in broadcast localism that the entire must-carry scheme was designed to foster. The simple fact is that SKC Stations broadcast far more locally produced public interest programming than other broadcasters not subjected to this proceeding. If the SKC Stations' entertainment programming format were anything other than sales presentations, they would not be subject to this proceeding at all and would be eligible for must carry like every other broadcaster that meets the traditional public interest standard. Thus, subsection (g) is significantly underinclusive; it impacts home shopping format broadcasters alone, failing to impose on other similarly situated broadcasters this special public interest standard.[45/]

45/ Differential treatment of similarly situated broadcasters would run afoul of the Constitution even if the discrimination were not based on the content of their programming. See Community Service Broadcasting v. FCC, 593 F.2d 1102, 1122 (D.C. Cir. 1978) (en banc) ("[Even] where noncontent-based distinctions are drawn in a statute affecting First Amendment rights, the Supreme Court has held that the government interest served must be 'substantial' and the statutory classification 'narrowly tailored' to serve that interest if the statute is to withstand equal protection scrutiny.").

b. The principles announced in two recent Supreme Court decisions are relevant to this proceeding.

Just last week, the Supreme Court decided City of Cincinnati v. Discovery Network,[46] a case of enormous importance to this proceeding. The Discovery Network decision stands for the proposition that the government cannot single out commercial speech for specially disadvantageous treatment when the harms that the government seeks to prevent are caused by both commercial and noncommercial speech alike.

Respondent Discovery Network was a business engaged in providing adult educational, recreational and social programs to individuals in the Cincinnati area.[47] It advertised its activities in a free magazine it distributed in newsracks throughout Cincinnati.[48] Harmon Publishing Company, Inc., co-respondent, published and distributed through newsracks in the Cincinnati area a free magazine advertising real estate for sale throughout the United States.[49] In 1990, the city's Director of Public Works revoked respondents' permits to use dispensing devices on public property, relying on a regulation that prohibited the

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46/ No. 91-1200, slip op. (U.S. March 24, 1993).

47/ Id. slip op. at 1.

48/ Id.

49/ Id. at 2.

distribution of "commercial handbills" on public property.[50/]

Respondents successfully challenged the revocation of their permits in the United States District Court for the Southern District of Ohio, and the United States Court of Appeals for the Sixth Circuit affirmed on the ground that the city's regulatory scheme completely prohibiting the distribution of commercial handbills on the public right of way violated the First Amendment.[51/]

When the case landed in the Supreme Court, respondents did not challenge their characterization as commercial speech, nor did they dispute the substantiality of the city's asserted interests in safety and esthetics.[52/] Therefore, the Court focused its inquiry on whether there was a "close fit between [the City's] ban on newsracks dispensing 'commercial handbills' and its interest in safety and esthetics . . . ."[53/] The city argued that its ban was closely related to the asserted interests because every decrease in the number of newsracks increased safety and improved the attractiveness of the cityscape. The Court considered this an insufficient justification because it was necessarily based on the city's incorrect premise that

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50/ Id.

51/ Id. at 3-5.

52/ Id. at 5.

53/ Id. at 8.

"commercial speech has only a low value."[54/] According to the Court, this argument "attaches more importance to the distinction between commercial and noncommercial speech than our cases warrant and seriously underestimates the value of commercial speech."[55/] The Court concluded that because the distinction relied upon by the city between commercial and noncommercial speech bore no relationship to the particular interests asserted in safety and esthetics, the regulation was an impermissible means of responding to the city's legitimate interests.

The lesson of Discovery Network is directly applicable to this proceeding. When the harm to be addressed by regulation is caused in part by both commercial and noncommercial speakers, the government cannot justify treating only the commercial speaker disadvantageously based on a perception that commercial speech is somehow of lower value. In addition, for any distinction drawn between commercial and noncommercial speech to be justified it must bear a relationship to a legitimate governmental interest. Here, even assuming the government has a legitimate interest in limiting the number of broadcasters that qualify for must carry out of a concern for the editorial discretion of cable operators, because both home shopping format broadcasters and non-home shopping format broadcasters contribute to the

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54/ Id.

55/ Id. (emphasis added).

problem, the government cannot discriminate against home shopping format broadcasters based on its view that their speech is of a lower value than the speech of other broadcasters. Reliance on such a distinction is unjustified because it bears no relation to the asserted interest.

Last year, the Supreme Court reinforced, in dramatic fashion, the First Amendment principles governing content-neutrality in its widely-publicized "hate speech" decision, R.A.V. v. City of St. Paul.[56/] The Supreme Court in R.A.V. announced a doctrine that bears directly and dispositively on this proceeding. The R.A.V. decision stands for the proposition that even when the government is regulating a class of speech that normally receives little or no First Amendment protection, the First Amendment's strict neutrality standards, which render presumptively

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56/ 112 S. Ct. 2538 (1992). The case involved a challenge to a St. Paul, Minnesota ordinance that provided:

> Whoever places on public or private property a symbol, object, appellation, characterization or graffiti, including, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender commits disorderly conduct and shall be guilty of a misdemeanor.

St. Paul Bias-Motivated Crime Ordinance, St. Paul, Minn. Legis. Code § 292.02 (1990). A minor was charged under the ordinance for burning a cross inside an African-American family's yard. The Supreme Court reversed the conviction, holding the St. Paul ordinance unconstitutional because it engaged in impermissible content-based and viewpoint-based discrimination.

unconstitutional discrimination based on content or viewpoint, still apply with full force.

The Court's opinion opened with a broad condemnation of content-based regulation of speech, a condemnation that went out of its way to repudiate the mechanical "categorical approach" associated with Chaplinsky v. New Hampshire.[57] Thus, the Court in R.A.V. explained:

> The First Amendment generally prevents government from proscribing speech, or even expressive conduct, because of disapproval of the ideas expressed. Content-based regulations are presumptively invalid.[58]

57/ 315 U.S. 568 (1942). There was a time when the Supreme Court appeared to embrace a relatively mechanical approach to free speech doctrine, treating certain categories of speech as utterly outside the protection of the Constitution. The most famous exposition of this approach came in Chaplinsky, in which the Court listed "the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words" as among those classes of speech "the prevention and punishment of which have never been thought to raise any Constitutional problem." Id. at 571-72.

58/ R.A.V., 112 S. Ct. at 2542 (citing Cantwell v. Connecticut, 310 U.S. 296, 309-11 (1940); Texas v. Johnson, 491 U.S. 397, 406 (1989); Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd., 112 S. Ct. 501 (1991)). In an important explanation of why the Court was repudiating the "categorical approach" of Chaplinsky, the Court explained:

> From 1791 to the present, however, our society, like other free but civilized societies, has permitted restrictions upon the content of speech in a few limited areas, which are "of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." We have recognized that "the freedom of speech" referred to by the First Amendment does not include a freedom to disregard these

(continued...)

At the heart of the Court's opinion in R.A.V was the proposition that the First Amendment's restrictions on content-based and viewpoint-based discrimination apply even when the government regulation involves a type of speech that as a class normally receives no First Amendment protection. Although it is constitutionally permissible, for example, to make criminal the distribution of "obscene" speech, it is not permissible to single out some subset of obscene speech -- such as obscene speech critical of the

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58/ (...continued)
traditional limitations. Our decisions since the 1960's have narrowed the scope of the traditional

government -- for specially disfavorable treatment.[59] Similarly, while speech that meets the current constitutional definition of "fighting words" may be criminalized, it is not permissible to take one subclass of fighting words -- such as racist fighting words -- and to treat that class more severely because of social disagreement with the racist message expressed.[60]

Similarly, the Court noted that it has upheld reasonable "time, place, or manner" restrictions, but only if they are "'justified without reference to the content of the regulated speech.'"[61] "And just as the power to proscribe particular speech on the basis of a noncontent element (e.g., noise) does not entail the power to proscribe the same speech on the basis of a content element," the Court explained, "so also, the power to proscribe it on the basis of one content element (e.g., obscenity) does not

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59/ Id. at 2543 ("Our cases surely do not establish the proposition that the First Amendment imposes no obstacle whatsoever to regulation of particular instances of such proscribable expression, so that the government 'may regulate [them] freely,' post, at 2552 (WHITE, J., concurring in judgment). That would mean that a city council could enact an ordinance prohibiting only those legally obscene works that contain criticism of the city government or, indeed, that do not include endorsement of the city government. Such a simplistic, all-or-nothing-at-all approach to First Amendment protection is at odds with common sense and with our jurisprudence as well.").

60/ Id. at 2544.

61/ Id. (citing Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989)).

entail the power to proscribe it on the basis of other content elements."[62]

The strength of the principles articulated in R.A.V. is underscored by the Court's unwillingness to sustain the St. Paul ordinance on the theory that even if the ordinance engaged in viewpoint discrimination, that discrimination was justified in light of the compelling interest that supported passage of the ordinance.[63] In defending its ordinance, St. Paul argued that even if the ordinance regulates

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62/ Id. Under the Court's analysis, then, the exclusion of "fighting words" from the scope of the First Amendment "simply means that . . . the unprotected features of the words are, despite their verbal character, essentially a 'nonspeech' element of communication." Id. at 2545. The Court thus treated fighting words as analogous to a noisy sound truck. Both sound trucks and fighting words are modes of communication that can be used to convey ideas. Id. "As with the sound truck, however, so also with fighting words: The government may not regulate use based on hostility -- or favoritism -- towards the underlying message expressed." Id.

63/ One might conceptualize this problem by posing the question of whether the First Amendment permits the government to effectively "buy out" of the rule against viewpoint discrimination by demonstrating that the discrimination will survive strict scrutiny. Under the strict scrutiny test laws regulating the content of speech will be upheld only when they are justified by "compelling" governmental interests and are "narrowly tailored" (or employ the "least restrictive means") to effectuate those interests. See, e.g., Sable Communications of California, Inc. v. FCC, 492 U.S. 115 (1989) (a ban on indecent telephone messages violates the First Amendment since the statute's denial of adult access to such messages exceeds that which is necessary to serve the compelling interest of preventing minors from being exposed to the messages); Simon & Schuster, 112 S. Ct. 501 (the state has a compelling interest in compensating victims of crime, but little if any interest in limiting such compensation to the proceeds of the wrongdoer's speech about the crime).

expression based on hostility towards its protected ideological content, this discrimination was nonetheless justified because it was narrowly tailored to serve compelling state interests.[64/]

The Court responded to this argument by conceding that these interests were compelling, and by conceding that the ordinance promoted those interests.[65/] The Court held, however, that the ordinance nevertheless failed the strict scrutiny test because it was not "necessary" to accomplish the asserted interests.[66/] The Court argued that because there were adequate content-neutral alternatives available to St. Paul, the argument that the ordinance was "necessary" was undercut.[67/]

For the purposes of this inquiry, the "bottom line" of the R.A.V. decision may be distilled in two propositions:

64/ The ordinance, the city argued, helped to ensure basic human rights of members of groups that have historically been subjected to discrimination, including the right of such group members to live in peace where they wish. See R.A.V., 112 S. Ct. at 2549.

65/ Id. ("We do not doubt that these interests are compelling, and that the ordinance can be said to promote

(1) The rules making content and viewpoint-based discrimination presumptively invalid apply to all government regulation of speech, even when it falls within a "category" such as "fighting words," or "obscenity" that normally receives little or no First Amendment protection. This principle applies to all speech, <u>including commercial speech</u>.[68/] In a passage that bears directly on the differential treatment accorded home shopping format broadcasters by section 4(g), the Court thus stated:

> [A] State may choose to regulate price advertising in one industry but not in others, because the risk of fraud (one of the characteristics of commercial speech that justifies depriving it of full First Amendment protection) is in its view greater there. But a state may not prohibit only

section 4(g) cannot justify an outcome that would deny must-carry status to the SKC Stations based solely on the content of their speech, which (even if characterized as "commercial") is speech that by definition receives substantial constitutional protection.[70/]

c. The commercial speech doctrine cannot justify content-based denial of a benefit to the SKC Stations.

While the SKC Comments establish that the SKC Stations' programming is not exclusively commercial speech and that, therefore, any content-based discrimination must be judged using strict scrutiny, even if a reviewing court were to conclude that it was commercial speech, it would receive substantial protection under the commercial speech doctrine and the recent Supreme Court decisions in Discovery Network and R.A.V., discussed above.[71/] The First Amendment affords commercial speech substantial protection.[72/] The government

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70/ Unlike "fighting words," commercial speech receives considerable protection under contemporary First Amendment doctrines. See discussion, infra at 37-38.

71/ See supra pp. 28-38.

72/ Indeed, the Commission has recognized the significant protection afforded commercial speech by the First Amendment:

> [W]e are concerned about becoming involved in the regulation of program content and of the attendant potential chilling effect on commercial speech which the guideline might exert. The Supreme Court has granted a significant First Amendment protection to commercial speech.

(continued...)